

The Michigan Supreme Court is considering changing a rule that will significantly harm the quality of legal representation in Michigan, and will certainly harm the public that we as lawyers have sworn to represent.

The proposed change to Rule 1.5 of the Michigan Rules of Professional Conduct:

1. Is unnecessary.
2. Seeks to poorly address a problem that does not yet exist in Michigan.
3. Seeks to regulate the arms-length contractual agreement made between lawyers.
4. And, most important of all, significantly harms the unsuspecting public in need of legal help.
5. It also harms the public by creating a perverse financial disincentive for lawyers to NOT refer cases to subject matter experts, but to handle these cases themselves.

There seems no reason for this proposed rule change to MRPC 1.5, other than as a boondoggle for lawyers who are less qualified to provide quality legal representation on matters that they should be referring out to better qualified injury attorneys. This proposed rule also creates a strong financial disincentive for the referring lawyer to refer a case to a specialist, and it will result in harming the public and diminishing the quality of legal representation in this state.

The public policy behind this proposed rule change could not be worse.

The rule change being considered would regulate how Michigan lawyers refer cases to other Michigan lawyers and [cap the attorney referral fee to 25 percent.](#)

We as lawyers in the state of Michigan have an important interest in protecting the public, and ensuring the public receives the best legal representation possible. This rule change would damage the quality of legal help and harm unsuspecting members of the public by making it harder for Michigan lawyers to refer cases to recognized subject experts who, by virtue of experience, demonstrated results, and legal expertise, receive referrals from other lawyers.

Again, this proposed rule would significantly harm the unsuspecting public in need of legal representation, by making it harder for lawyers to refer cases to legal experts. The rule has a number of unnecessary and bureaucratic legal disclosure requirements. These disclosure rules would create a dampening effect that will make it awkward for lawyers to connect clients with those lawyers best able to serve their interests. It will be extremely awkward for many injury attorneys, especially in the beginning of a case and a new attorney-client relationship, to explain to a new client why they feel the client would be better served with a subject matter specialist. Instead of referring these cases out to a lawyer better able to help the client, more lawyers will choose to keep cases they would have otherwise referred to other lawyers. It is the unsuspecting client who is harmed.

The legal profession should be making it easier to have lawyers connect clients with lawyers best able to help them, and who have the most subject matter expertise and experience. This proposed rule change instead makes it harder.

Yes, contingent fees between lawyers and the public should be – and must be – regulated. We have a legitimate and important interest in preventing abuse, and as a professional organization, we should seek to protect the public from abuse. An attorney-client contingent fee agreement that is signed

between a client and a lawyer should have safeguards so if a client is injured, or vulnerable, or unsophisticated, he or she is protected.

This proposal, however, seeks to regulate the contractual relationship among lawyers. It seeks to impose regulation on a voluntary agreement negotiated freely between two attorneys. These referral agreements should reflect the skill of the attorney being referred the case, the underlying complexity and cost of the case, and the nature of the attorneys' relationship to each other. Michigan lawyers should be able to enter into a private contract based upon these, and other factors.

Moreover, this unnecessary regulation seeks to poorly addresses a problem that does not even exist in Michigan.

Who is this proposed rule intended to protect? The lawyer who probably shouldn't have signed the case to begin with, or the unsuspecting public? It is fiction to believe in a tough and competitive legal world, that a lawyer won't sign a case he probably would otherwise have referred to another lawyer, even if the client would have been far better served by that lawyer referring the case to an expert and receiving an attorney referral fee. Speaking of fiction, this proposed rule change sounds like something out of Ayn Rand's "Atlas Shrugged." Perhaps we should call it the "Equal Opportunity and Full Employment Act for Less Qualified Lawyers"?

Limiting the maximum referral fee to 25 percent of the amount recovered creates a direct adverse financial incentive for the referring lawyer. We are creating an economic incentive for attorneys to keep cases, because by capping the referral fee to 25 percent, that lawyer makes just as much money if he keeps the case as he would if it had been referred out — even if the client recovers less than half! The money the referring lawyer receives is the same, but the client (and innocent public in need of legal representation) has now received one-half to one-third the amount he or she should have received if the matter had been referred to a more qualified lawyer to handle the case.

This rule only hurts the public, and it only helps lawyers less qualified to handle legal matters that they should be referring out to more qualified lawyers.
For the public's best interest, let's change the rule on attorney specialization now.

These cases should be referred to a specialist. Yes, a specialist! For it is time for the Michigan Supreme Court to change its out-dated rules prohibiting attorneys from indicating they specialize in a specific area of law. It is time we recognize what lawyers in Michigan do every single day — which is they refer cases to lawyers that specialize in certain areas of law.

Our ethical rules are increasingly at odds with a legal world that is ever more complex, more fragmented, and more specialized with every passing day. We should be encouraging lawyers to connect the public with those lawyers who specialize in that area of law, because it is the client who is best served. We should not be ignoring the increasing complexity of law today, or trying to enforce rules that were created for a by-gone era of general practitioners. And we certainly should not be creating financial disincentives that prevent the public from receiving the highest quality of legal representation possible.

Our mission is to serve the public, not ourselves. This rule change only serves those lawyers who should have referred out the case and received an attorney referral fee by putting the client's interest first.

[Steven M. Gursten](#)

Partner, Michigan Auto Law

www.michiganautolaw.com